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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,183	10/02/2001	Brian L. Quarendon	2400-372A	3587

27820 7590 10/04/2005

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EXAMINER
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SHAPIRO, JEFFERY A

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/970,183	Applicant(s) QUARENDON ET AL.	
	Examiner Jeffrey A. Shapiro	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 46-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 46-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 46-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christman et al (US 6,390,151 B1) in view of Ginter (US 6,253,193 B1).

Christman discloses the fuel dispensing system having the following.

- a. several fuel dispensers (14);
- b. user interface (52 and 54);
- c. vehicle communications device (30) (see also col. 13, lines 35-64 and col. 14, lines 12-25);
- d. enabling the customer to purchase several items or services in addition to purchasing fuel, all on the same transaction (see col. 19, line 45-col. 20, line 29, and figure 4);

Christman does not expressly disclose, but Ginter discloses the following.

- e. a user interface allowing for the purchase of music (see figure 7, noting, for example, display (614), keyboard (612) and voice recognition (613)—see also figures 1, 1a, 2 and 72a-b);

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- f. a system adapted to download the music for ultimate playback in a user device (see figure 7, noting, for example, cable (628), scanner (626), satellite (624), compact disc (620) and modem (618);
- g. said system downloads music directly to a memory unit associated with a user device (see figure 7, noting, for example, cable (628), scanner (626), satellite (624), compact disc (620) and modem (618);
- h. said system downloads music over a radio frequency (again, note cable (628);
- i. the music is retrieved from a location remote from user prior to downloading to said user (see figures 1, 1a and 2);
- j. the fuel dispenser downloads the music indirectly to a memory unit associated with the user (see figure 7, noting, for example, display (614), keyboard (612) and voice recognition (613)—see also figures 1, 1a, 2 and 72a-b);
- k. said system downloads the music to a portable storage medium (620);
- l. said portable storage medium (620) comprises a computer readable portable storage medium;
- m. said system downloads the music to a playback device associated with the user (note device drivers (738 and 736);
- n. said system begins downloading the music during an associated fuel transaction;

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- o. a remote retail terminal finishes downloading the music (note that the remote devices described above finishes downloading the music);
- p. said system instructs a remote retail terminal to download the music (see figures 1a, 1b and 2);
- q. said system is associated with a car wash facility, quick serve restaurant or retail terminal in a convenience store within a fueling environment (see col. 233, lines 8-12 and 25-30);
- r. music dispenser comprising a user interface configured to enable a consumer to initiate a multistage music purchase wherein an order is initially placed at the music dispenser and at least some portion of the music is received from a retail terminal remotely positioned from the music dispenser (see figures 1, 1a and 2);

Note that the system of Ginter broadly discloses a variety of user appliances, financial transaction schemes, and communication methods. See, for example, figures 1, 1A, 7, col. 57, lines 18-49, col. 58, lines 12-24 and col. 60, lines 20-48.

Note that col. 234, lines 64-67 and col. 235, lines 1-13, noting in particular, lines 8-10 mention use of the Ginter system at other commercial establishments, such as gasoline stations.

Note also that Ginter's system operates with a central database of music files.

Both Christman and Ginter are considered to be analogous art as they both concern point-of-sale systems that link customers through the internet.

At the time of the invention, it would have been obvious for one ordinarily skilled in the art to use Christman's communication device (30) to access Ginter's music download device through Christman's fuel dispensing system as part of a virtual distribution environment (VDE).

The suggestion/motivation to do so would have been to provide music at a gasoline station. See col. 235, lines 1-13, which mentions in part, a gasoline station as one of several example retail establishments in which the VDE system may be used. See also col. 233, lines 25-30, which mentions that a portable appliance (2600) may be used for secure communication with a retail terminal. A fuel dispenser may be construed as a retail terminal. Further, Col. 59, lines 39-41 indicates that VDE participants may have an electronic appliance which may be or contain a computer. Fuel dispensers, as currently well-known in the art, have computers. See, for example, Yamashita et al (US 4,660,153), figures 1 and 3 which illustrate a computer in a fuel dispenser which generates sound and music. See also Claim 5 of Yamashita et al, which describes one or a plurality of melodies used by said fuel dispenser as a greeting.

Note that, at the very least, the system of Ginter et al is considered to be capable of processing a transaction automatically. It is also obvious that one can nest one transaction amongst several other transactions or tasks, since this system is automatic and computer-based. See, for example, Ginter, Col. 23, lines 40-42 and col. 30, lines 42-65 discloses simultaneous transactions occurring in various business models. Note

also Christman, cited above. Therefore, it would have been obvious for one ordinarily skilled in the art to process simultaneous transactions, of either multiple music transactions, individually, or along with other transactions for food or gasoline.

### ***Response to Arguments***

3. Applicant's arguments with respect to Claims 46-77 have been considered but are moot in view of the new ground(s) of rejection. See above discussion.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nicholson (US 2001/0049626 A1), Zalewski et al (US 2005/0017068A1), Zura et al (US 2003/0028285 A1) and McCall et al '591 are cited as disclosing fuel dispensers through which a customer may access internet based data files, such as mp3 music or other files. Bernard et al '213, Wiser et al '596, Harada et al '160, Kleiman '945, Montero '912, Schneier et al (US 2003/0177347 A1) and Joyce et al (US 2003/0026404 A1) are cited as examples of internet-based music distribution systems.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (571)272-6944. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



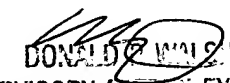
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Shapiro  
Examiner  
Art Unit 3653

September 28, 2005



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